No. 08-1118

IN THE

Supreme Court of the United States

PATRICIA KONARSKI, ET AL.,

Petitioners,

-vs-

CITY OF TUCSON, ET AL.,

Respondents.

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FRANK KONARSKI, ET AL.,

Petitioners,

-vs-

MARY JEAN RACITI, ET AL.,

Respondents.

On Petition for Writ of Certiorari to the
United States Court of Appeals for the Ninth Circuit

REPLY BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

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He took our money and deceived us, and passed away.

Others and we strongly believe that some individuals of the City of Tucson, through their bad influence—discrimination, prejudice, hate crimes, frames, extortion, etc.—caused some of the attorneys listed above to take our money and deceive us. That's why we are appealing to the Supreme Court.

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INTRODUCTION

When navigating through City Respondents' ("Respondents") Brief in Opposition, be wary of the manipulations made by Respondents' attorneys, as they have been implicated of wrongdoing herein.

This is based on Respondents' own employee-turned-whistleblower, Inspector Lee Hanley, who has said, in reference to Petitioners' attempts to obtain records, "*Our attorneys' office* ***likes to give you half of them***," and that "*I've been telling the [Respondent] lawyers for years. I've been going, you guys are going to get screwed one of these days because what you're doing is* ***not legal***." Court Reporter Transcript ["CRT"] of Whistleblower Lee Hanley, April 6, 2005, at 18, lines 1-2, and at 23, lines 12-15.[1] (Emphasis added.) Another then-employee-now-whistleblower, Jess Craig, says he received retaliation when he would no longer attack Petitioners: "They [Respondents] definitely put me on the X-list, and I got tormented for it. Tormented." CRT of Whistleblower Jess Craig, April 19, 2005, at 19, lines 9-11. Despite this revelation, Respondents lie to this Court: "[t]here are no 'whistleblowers'..." Resp. Br. in Opp. at 8. Given the above whistleblower excerpts, Respondents' latter quote speaks to their dishonesty.

Another deception in their Brief in Opposition, concerning the Section 8 Case, *Patricia Konarski, et al., v. City of Tucson*: Respondents argue that their *barring* Petitioners Patricia, John F. and Frank E. Konarski—starting from January 2003 when the three petitioners first became rental property

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[1] Whistleblower CRTs are available from the district court or 9th Circuit records.

owners/landlords to today—from fulfilling the low-income housing demand of renting to prospective Section 8 tenants desiring their housing by Respondents' refusal to perform move-in housing inspections of the three petitioners' apartments was neither a "suspension nor a debarment." Resp. Br. in Opp. at 5. Respondents claim they are immune from following Section 8 Housing program considerations promulgated in the Code of Federal Regulations (or "C.F.R.," "C.F.R.s"), particularly 24C.F.R. 24.600, et seq., even though they are *federally paid to administer this federal program*.

Respondents' neither-a-suspension-nor-a-debarment assertion defies logic: If the three petitioners were neither suspended nor debarred, 1) Respondents would not be refusing to conduct their federally-paid function of move-in housing inspections of the three petitioners' rental properties upon prospective Section 8 tenants' submitted intentions to use their federal Section 8 vouchers there; 2) the three petitioners would currently be alleviating the low-income Section 8 housing demands; and, thus, 3) the Section 8 Case would not exist to force Respondents to follow the C.F.R.s.

As to the Whistleblower Case, *Frank Konarski, et al., v. Mary Raciti, et al.*: Respondents argue that all five "Petitioners do not dispute that the Ninth Circuit correctly found that the requirements of res judicata were met." Resp. Br. in Opp. at 3. To the contrary--and another revelation of Respondents' fraud—Petitioners actually have said "the Whistleblower Case did not meet the criteria of *res judicata*." Pet. at 12; *see also id.* at 13,14,15.

More to the point, even if *res judicata* elements were 'met' in the Whistleblower Case, this Court

must consider that given the *clandestine* corruption, *res judicata* should not have been so rigidly applied.

Both the Section 8 Case and the Public Corruption Whistleblower Case exude compelling reasons to be heard by this Court. The Court of Appeals' circuit-defying opinion compounds the difficulty of addressing the "growing shortage of affordable housing"[2] as the opinion effectively denies citizens to hold federally-paid housing authorities accountable to the C.F.R.s amid also the ever-increasing typical national scenario of "millions of dollars [being] unaccounted for and thousands of residents unserved"[3] in the Section 8 Housing program, all the while citizens are without the civil means to combat clandestine corruption—a "cancer on the City." CRT of Whistleblower Lee Hanley, April 6, 2005, at 5, line 10.

Section 8 Case

Despite Respondents' detractions, the crux of the Section 8 Case is this: The Ninth Circuit Court of Appeals ("Court of Appeals") opined, *without authority*, that the C.F.R.s—the essential frameworks of federal programs—particularly 24 C.F.R. 24.760, has no application to any citizen who involves himself in a federal program.

24 C.F.R. 24.700, et seq., affords property

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[2] Eric Sagara, *Cost of Roof Overhead Going Through the....-City, Agencies Seek Affordable Housing Options*, TUCSON CITIZEN, Sept. 15, 2006, at 1A (quoting City Respondent Emily Nottingham).

[3] Jessica Garrison, *A Struggle to Get Housing in Order—The L.A. Agency's Chief Has Discovered Millions of Dollars Unaccounted for and Thousands of Residents Unserved*, LOS ANGELES TIMES, Oct. 21, 2007, http://articles.latimes.com/2007/oct/21/local/me-housing21.

owners—such as Petitioners Patricia, John F. and Frank E. Konarski—a suspension-cause hearing. However, defying other circuit courts, the Court of Appeals took the unprecedented step of adding the unachievable legal prerequisite—obstacle—that property owners first need to show a right to participate in the Section 8 Housing federal program *before* they could enjoy 24 C.F.R. 24.760 protections designated for property owners. Of course, since the Court of Appeals cites to the legal establishment that no property owner has a right to participate in the federal program, the federal regulations intended to protect property owners—i.e., 24 C.F.R. 24.700, et seq.—are rendered fruitless and robbed of their regulatory protection purposes by the Court of Appeals' circuit-differing 'prerequisite' opinion. Respondents cited to <u>no</u> authority to support this opinion. In fact, Respondents undercut this opinion by not denying the protections found in 24 C.F.R. 24.760 are owed to the three petitioners—it is just that Respondents erroneously assert they, themselves, are under no obligation to provide such protections as federally paid administrators for their bar actions. *See* Resp. Br. in Opp. at 5, 15.

Public Corruption Whistleblower Case

The *res judicata* elements were not met, but even if they were—given the "top secret" corruption—the standard was too rigidly applied because Petitioners had only begun to discover damning facts in April 2005 what Respondents had kept secreted away: The conspiracy to destroy Petitioners' interstate commerce business,[4] especially

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[4] A business of multiple units is considered interstate commerce in *United States v. Lopez*, 514 U.S. 549 (1995).

given that whistleblowers revealed that Respondents had acted to "***falsify documents***," including to "change stuff inside the computer," and conduct their corruption in a manner that was "***kept...top secret....behind closed door sessions***," which this Court should take exception to and consider as part of what is today's certain instances that are deemed sufficiently gross to demand a departure from the rigid adherence to the doctrine of *res judicata*. Respectively, CRT of Whistleblower Jess Craig, April 19, 2005, at 19, line 23; CRT of Whistleblower Robert and Brian Hendricks, May 9, 2005, at 20, line 11; and *id.* at 11, lines 4-8. (Emphasis added.)

SECTION 8 CASE: REASONS FOR GRANTING PETITION

I. Respondents *Fail* to Show How the Court of Appeals is Not in Conflict With Other Circuits, and Their Argument That—as Federally Paid Administrative Officials of the Federal Section 8 Housing Program—They Do Not Need to Follow the C.F.R.s is Untenable.

A. As to 24 C.F.R. 24.700, et seq., and Interstate Commerce, the Court of Appeal's Erroneous Opinion Conflicts With the Other Circuit Courts' Opinions.

Respondents claim their "decision in March 2001 to no longer conduct business with Petitioners is neither a suspension nor debarment." Resp. Br. in Opp. at 5. In actuality, Respondents' decision to withhold the three petitioners who make up this Section 8 Case—Petitioners Patricia, John F. and

Frank E. Konarski—were *not* in the business of renting apartments in 2001, much less were they property owners that year.[5]

It was first in 2003 and thereon after, in fact, when, by their refusal to conduct move-in housing inspections, did Respondents bar Petitioners Patricia, John F. and Frank E. Konarski from fulfilling the low-income housing needs of prospective Section 8 tenants who sought their housing of which these three petitioners became the sole owners/landlords in January 2003. Respondents refused to conduct the move-in inspections even though *Respondents, as federally paid administrative officials, are required to do so* of housing owned by property owners who are *not* suspended/disbarred. Refusing to conduct these inspections ended the "free-choice" in the federal free-choice Section 8 Housing program, as prospective Section 8 tenants were *steered away* from their free choice of housing by Respondents—in defiance of "allowing families to choose privately owned rental housing."[6]

After 18 months since January 2003 of being unable to rent, without a hearing under 24 C.F.R. 24.760, to prospective Section 8 tenants who inundated the three petitioners with apartment move-in requests, the three petitioners filed their suit for this C.F.R. violation in 2005.[7]

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[5] Respondents are confused: The March 2001 decision letter *exclusively* addressed Frank J. Konarski (Sr.).

[6] Section 8 Program Description (Respondents federally paid; free-choice tenant housing) is located on the HUD site at http://www.hud.gov/progdesc/voucher.cfm.

[7] The three petitioners' initial suit was filed May 17, 2004; the amendment followed in 2005. Obviously, no lawsuit was filed in 2001 as Respondents' violation of 24 C.F.R. 24.760 had yet to

Though, Respondents futilely cling to the 2001 Title VII employment case of senior Frank J. Konarski.[8] Resp. Br. in Opp. at 2, 5-6, 17. Contrary to Respondents' assertion, since the decision to suspend/debar Frank J. Konarski(Sr.) from the federal program took place in March 2001 and the Title VII employment suit was thereafter filed in the same year, the City of Tucson, as a federally paid Section 8 administrator, had yet to violate the 18-month period of suspension without a hearing, as 18 months had not transpired between the March 2001 letter of denial and the May 2001 Title VII suit.[9]

From this 2001 case, the Court of Appeals applied to this Section 8 Case the legal notion that no property owner has a right to the Section 8 Housing program.

Though, in applying this notion, *the Court of Appeals erred in going a step <u>further</u>* to erroneously state in the instant Section 8 Case—wherein lies the issue before this Court—that Petitioners Patricia, John F. and Frank E. Konarski, and others similarly situated, could not enjoy the protections of 24 C.F.R.

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occur until the 18 months had passed since 2003.

[8] In n.5 of Resp. Br. in Opp. at 6, Respondents fail to note they were sanctioned and admonished often, notably approximately in 1997 and 2001 by HUD, though they cite to their submitted present-day-unvetted fabricated allegations against Frank J. Konarski (Sr.) to the district court to besmirch his good name; now, with the whistleblower revelations of Respondents' fraudulent acts—to "***<u>falsify documents</u>***," "***<u>change stuff inside the computer</u>***"—the district court will need to revisit Respondents' submissions, and cannot be relied upon. CRT of Whistleblower Jess Craig, April 19, 2005, at 19, line 23; CRT of Whistleblower Robert and Brian Hendricks, May 9, 2005, at 20, line 11; and *id.* at 11, lines 4-8.

[9] Frank J. Konarski,Sr. is not even a party to the Section 8Case.

24.760 after 18 months of being barred from renting to prospective Section 8 tenants in need of housing simply because these three petitioners did not have a right to participate in the Section 8 Housing program. A right to the program *is not necessary* for the C.F.R.s to take effect, according to other circuits. Respondents do not controvert this.

The Court of Appeals *opinion lacks authority* to require the three petitioners to exhibit a right to the federal program before being afforded 24 C.F.R. 24.700, et seq. protections. The Court of Appeals opinion also defies other circuits' jurisprudence.

In fact, the 6th Circuit opinion in *Buckeye Terminix Co. v. U.S. Dep't of Housing & Urban Dev.*, 900 F.2d 259 *2 (6th Cir. 1990) that a property owner *does not* need to have a right to a federal program, "*does not* [need to] contract with HUD," but only have a mere business "interest" in qualifying to participate in the program in order to be entitled to the protections of 24 C.F.R. 24.700, et seq., has been left uncontroverted by Respondents. (Emphasis added.) As with the business in *Buckeye*, at bare minimum, the three petitioners were entitled to "a **prompt** post-deprivation hearing" under federal regulations. *Buckeye*, 900 F.2d 259 *13 (Emphasis added.) *See also Housing Study Group v. Kemp*, 739 F. Supp. 633 (D.C. May 16, 1990) (citing *Buckeye, supra*).

Here, the three petitioners—with beyond a mere participation interest—have been engaged with numerous Section 8 voucher holders who have inundated the three petitioners with transaction forms in order to use their federal vouchers at the three petitioners' apartments, yet Respondents—the federally paid administrative 'facilitators'—have had the audacity to ironically interfere with the

facilitation of these voucher holders' housing needs *since January 2003 without any hearing*—interfering with also the federal housing program's purpose of permitting tenants to choose their own housing, and interstate commerce, as "rental property is unquestionably...affecting interstate commerce." *U.S. v. Gomez*, 87 F.3d 1093, 1094 (9th Cir. 1996).

Respondents' response to *Buckeye* does not dispute that 24 C.F.R. 24.700, et seq., affords suspension/debarment protections, but, instead, acts to erroneously say that only HUD has to follow regulations for suspension/debarment, since Respondents believe they operate 'above' 24 C.F.R. 24.700, et seq. Resp. Br. in Opp. at 5, 15. If HUD cannot debar/suspend the three petitioners *without* a hearing, Respondents *cannot either*.

B. Respondents' Argument That They Need Not Follow the C.F.R.s as Federally Paid Administrators is Untenable.

1. Respondents' Argument is Not Properly Brought Before This Court.

The Court of Appeals refused to accept Respondents' repeated argument of not needing to follow the C.F.R.s. Aple.Ans.Br. at 6, 13-15.

If Respondents sought to make this argument an issue, they should have filed a cross-petition.

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2. Even if before this Court, Respondents' Argument of Being Immune to Following the C.F.R.s is Fallacious Because, as Federally Paid Administrators, They Are Bound by 24 C.F.R. 24.700, et seq.

The real issue before this Court is, again, that the Court of Appeals defied the jurisprudence of other circuit courts in creating an obstacle for citizens to apply the protections of 24 C.F.R. 24.700, et seq., and *not* whether Respondents were free to defy 24 C.F.R. 24.700, et seq.

Sims v. Kemp is additional authority that Respondents are bound by 24 C.F.R. 24.700, et seq., as the 7th Circuit *Sims* court opined that "the Housing Act [of 1937] and its accompanying regulations [24 C.F.R. 24.700, et seq.] apply here," including "24 C.F.R. 24.700," when public housing authorities, not only HUD, take actions against an individual—just as such regulations applied when disbarment/suspension actions were taken against a company interested in being qualified to participate in a federal housing program in *Buckeye*—because, similarly, failing to follow the regulations would provide housing authorities, like Respondents, an "end-run around the clear intent of Congress"—the intent of free-choice housing. 781 F. Supp. 1264, 1268 (N.D. Ill. July 11, 1991). In other words, what is important to take from *Sims* and *Buckeye* is that 24 C.F.R. 24.700, et seq., applies to the three petitioners even if a limited denial participation (LDP), suspension or debarment was initiated by a city acting as federally paid Section 8 administrators or HUD.

Respondents misapply *DeRoche v. United States*, 2 Cl.Ct. 809 (1983) and *Eubanks v. United States*, 25 Cl.Ct. 131 (1992) to convey they stand for the premise that Respondents are without the federal authority of HUD to follow 24 C.F.R. 24.700, et seq. Resp. Br. in Opp. at 5. In reality, like *DeRoche*, *Eubank* does not establish this—it just merely states that the U.S. cannot be liable for city acts through the signature of the "Mayor of Topeka" because "the United States is not a named party to a contract...." 25 Cl.Ct. 131, 138. Here, the the U.S. is not sued. Instead, Respondents are sued for their indefinitely suspending the three petitioners.

Eubanks supports Petitioners because it establishes "HUD's imposition of regulations and restrictions on the use of the funds it provided to the Topeka Housing Authority," and, thus, as also a housing authority, Respondents had such regulations imposed on them, including 24 C.F.R. 24.700, et seq. 25 Cl.Ct. 131, 137.

Respondents also claim their barring the three petitioners was "within the discretion contemplated by the United States Housing Act of 1937." Resp. Br. in Opp. at 6. However, discretion is not open-ended: "HUD enters into an Annual Contributions Contract (ACC) with the participating housing authority...[and the] ACC, *inter alia*, **mandates** that the participating housing authority **follow** the federal guidelines in operating the program." *McQueen v. Phila. Hous. Auth.*, No. 02-8941, 2005 U.S. Dist. LEXIS 12058, at *7 (E.D. Penn. June 9, 2005). Respondents' discretion is not *carte blanche* on federal funds.

Though, Respondents' attempts to force the Court of Appeals to rule that they are not obligated

to follow 24 C.F.R. 24.700, et seq., are without consequence, since this is not before this Court as the Court of Appeals *refused* to adopt Respondents' argument. Aple.Ans. Br. at 6, 13-15.

WHISTLEBLOWER CASE: REASONS FOR GRANTING PETITION

II. Respondents *Fail* to Show How the Court of Appeals is Not In Conflict With Other Circuit Courts and This Court Concerning Holding Corrupt Officials Accountable for Their "Top Secret" Corruption Scheme.

A. *Res Judicata* Elements Were Not Met, But Even If They Were, Given the "***Top Secret***" Corruption, *Res Judicata* *Cannot* Be So *Rigidly* Applied.

1. *Res Judicata* Elements Could Not Be Met.

Given Respondents' manipulations in their Opposition at 7-8, here the record is corrected:[10] In 1997, Petitioner Frank J. Konarski(Sr.) suffered a *no-probable-cause* police brutality, as determined by two judges.

Petitioners sued *for* *no-probable-cause* brutality in 1998.[11]

In 2001, Petitioner Frank J. Konarski sued the City *for* a Title VII employment matter out of a 2001

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[10] See also n.6 herein.

[11] The City of Tucson deprived Petitioners of a trial via a technicality dismissal.

city letter addressed solely to him.

Whistleblowers Craig, Hendricks, among others, became employed by Respondents' Department of Neighborhood Resources("DNR") that was created in **2002**. They came **forward as whistleblowers in 2005**.

Logically, *res judicata* does *not* apply: **In 1998 nor in 2001 could Petitioners have sued Respondents for events that did not take place until 2002 and thereafter**.

2. Maintaining *Stare Decisis*: Given "***Top Secret***" Corruption, *Res Judicata* Should *Not* Have Been *Rigidly* Applied.

Petitioners' then-counsel, starting in response to Respondents' motion to dismiss at 12-13, raised this: "In fact, the Supreme Court of the United States held that: '...injustices which, in certain instances, are deemed sufficiently gross to demand a departure from rigid adherence to the doctrine of *res judicata*...." Respondents have not controverted this argument, but have vexatiously accused Petitioners of "fraud" in having incorrectly attributed this latter quote to *Hazel-Atlas Glass Co. v. Hartford-Empire Co.*, 322 U.S. 238 (1944) and that *Hazel-Atlas* is no longer good law. Resp. Br. in Opp. at 3,15.

However, Respondents are wrong in both respects. Without due diligence, Respondents recklessly accuse, since this Court, in 1998, like Petitioners, *also attributed* the foregoing quote that injustices demand "a departure from rigid adherence to the doctrine of res judicata" to *Hazel-Atlas* in *United States v. Beggerly*,524 U.S. 38, 46 (1998). This is still the *stare decisis* of this Court, as found in

Beggerly, and other post-cases.

Whistleblowers reveal that the corruption operations targeting Petitioners were ***"top secret,"*** done ***"behind closed door sessions"*** where Respondents falsified documents, etc., in attempting to ***"put them [Petitioners] out of business."*** CRT of Whistleblower Robert and Brian Hendricks, May 9, 2005, at 20, line 11; at 11, lines 4-8; at 3, lines 17-18,respectively.[12] (Emphasis added.) This is a prime injustice example requiring a "departure from rigid adherence to the doctrine of *res judicata*." *Beggerly*, 524 at 46.

There is scant privity of parties,[13] and given the *surreptitious* efforts of corrupt Respondents that caused information to be withheld from Petitioners and the court until the whistleblower revelations in 2005, the elements of *res judicata* should *not* have been so *rigidly* applied.

CONCLUSION

Given the foregoing, it is prayed for that this Court grant the petition for writ of certiorari.

Others and Petitioners believe Respondents' Brief in Opposition prepared by City Attorneys Michael Rankin and Martha Durkin are the main leaders of the crime ring that commits extortion, corruption, hate crimes, discrimination, frames, etc. Michael Rankin and Martha Durkin, in their brief,

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[12] Petition at 20-21 includes whistleblower revelations of Respondents' use of a court to effect fraud: the fabrication—trumping up of criminal charges to extort money from Petitioners in 2003.

[13] For more information on scant privity, see Petition at 14.

created fabrications—pure lies to camouflage all of Respondents' and their criminal acts that they did with their own conflict of interest, including to terrorize Petitioners for years to steal their properties, businesses, and ruin their good name.

Whenever Petitioners tried to defend themselves, their attorneys were discouraged and threatened. To prove this, please see all the attorneys reflected in the introductory of the Petition and this Reply. Petitioners' attempt to hire a new attorney was met with the same discouragement and threats by City/Respondents. Proving this, Petitioners have affidavits from these attorneys.

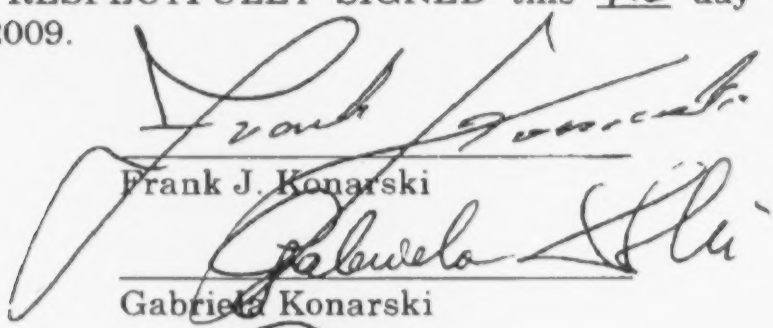
Petitioners also tried contacting the local police, local FBI, and attorney general's office, but they are silent. The local FBI, through Respondents' influences, threatened Petitioners with no reason instead of helping them, claiming they are above God.

Respondents are holding Petitioners' businesses hostage and are deliberately attempting to extort, by proxy, over $800,000.00 from Petitioners through a deliberate frame via homeless people who fraudulently-induced their tenancy at Petitioners' business and violated a crime-free addendum in disturbing Petitioners' complex community, as determined by eviction trial Judge Walter Weber, who rendered an eviction judgment in Petitioners' favor. Despite this, others and Petitioners believe City/Respondents, in retaliation to Petitioners' exposing their corruption, are deliberately using their conflict-of-interest attorney-general friends and scam-artist attorney to extort money from Petitioners and their insurance in attempting to weaken Petitioners.

To prove these facts, see the whistleblower excerpts found here and in the Petition, which come from the transcripts prepared by a court reporter present with an attorney conducting whistleblower interviews. Immediately after these transcripts were released to Respondents/City, the court reporter was found dead; others and Petitioners believe this happened because of the public corruption whistleblower case.

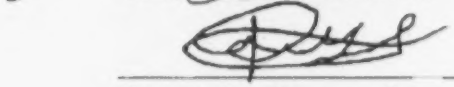
Please hear Petitioners' cases.

RESPECTFULLY SIGNED this 12 day of May 2009.

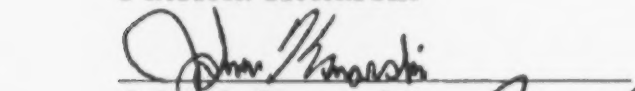


Frank J. Konarski

Gabriela Konarski



Patricia Konarski



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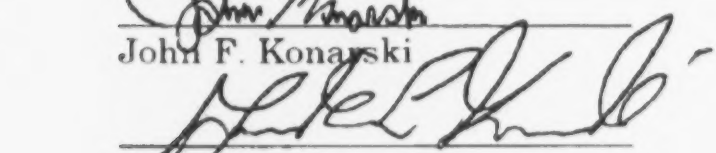

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He took our money and deceived us, and passed away.